

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-3920
Summary Calendar

RENE DAIRIES,

Plaintiff-Appellant,

versus

ALVIN OSER, JUDGE, ET AL.,

Defendants

GWEN SERPAS, Court Reporter,

Defendant-Appellee.

Appeal from the United States District Court for the
Eastern District of Louisiana
(CA 90 622 L (3))

(January 26, 1994)

Before GOLDBERG, KING, and GARWOOD, Circuit Judges.

PER CURIAM:*

Plaintiff Rene Dairies was convicted of possession of heroin with intent to distribute in a Louisiana state court. He is currently serving a jail sentence for this offense in a Louisiana jail. Dairies filed this action under 42 U.S.C. § 1983 against Gwen Serpas, a court reporter, alleging that she failed to

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

transcribe properly the testimony at his trial. More specifically, Dairies alleged that Serpas falsified the transcription of the trial proceedings as part of a conspiracy to deprive him of his constitutional due process rights. This alleged conspiracy included defendants Serpas, Alvin Oser (the state trial judge), Scot Gardner (the prosecuting attorney), and Ross Scaccia (Dairies trial counsel). An amended complaint dropped the allegations against all of the defendants except Serpas.

After conducting an evidentiary hearing, a magistrate judge concluded that Dairies' claims against Serpas were without foundation and recommended that the case be dismissed with prejudice. The district court adopted this recommendation and dismissed the complaint. Dairies timely appealed.

Our review of the record leads us to the firm conviction that the district court committed no reversible error.

Moreover, Dairies raised his falsified transcript argument in a federal habeas corpus proceeding. After an evidentiary hearing in that proceeding, the district court made a finding of fact that Dairies' testimony that there were numerous alterations of the state trial transcript was not credible. Judge Garwood found that this credibility determination was not clearly erroneous and denied Dairies' request for a certificate of probable cause. See Dairies v. Foti, No. 93-3165 (5th Cir. filed Aug. 25, 1993). Since Dairies is barred from attacking the factual and legal determinations made in a habeas corpus proceeding in a § 1983 case,

see Allen v. McCurry, 449 U.S. 90 (1980), Dairies cannot prevail on his claims here.

The judgment of the district court is AFFIRMED.